

Federal Labor Standards: Common Challenges

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Common Challenges

- Forgetting to check for wage decision modifications.
- Certified Payrolls not prepared correctly.
- Workers not classified properly.
- Lacking authorized deductions.
- No, insufficient or improperly prepared employee interviews.



Davis-Bacon Act Applicability



FEDERAL FUNDS

Projects financed whole or in part with federal funds.



CONSTRUCTION PROJECTS

Includes new construction, alteration and/or repair, painting and/or decorating of public buildings or public works. Applies to construction activities performed on a defined project site.



LABORERS & MECHANICS

All laborers and mechanics employed by a contractor and subcontractor (includes apprentices, trainees, and working foreman) must be paid a locally prevailing wage for their job classification(s).



Davis-Bacon Act Applicability



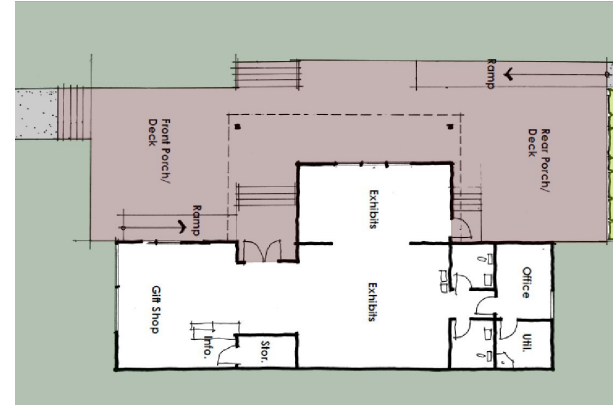
DEMOLITION

Davis-Bacon generally does not cover demolition unless it will be followed by a Davis-Bacon covered construction activity.



RESIDENTIAL REHAB

Davis-Bacon does not apply to the rehabilitation of residential property with less than eight (8) units under one contract.



CRSC & EQUIPMENT

Davis-Bacon generally does not cover construction-related soft costs or the installation of equipment.



FORCE ACCOUNT

Davis-Bacon does not apply to force account projects.



Responsibilities of Contract Compliance Officer

- Review certified payroll reports
- Make sure Register of Assigned Employees is submitted with first payroll
- Make certain that Monthly Register of Contractors is submitted monthly
- Ensure employee interviews are conducted and compared against payroll report
- See that underpaid workers receive restitution
- Use the logs to document compliance and resolution of any problems



Bottom Line



The Grantee is responsible for ensuring someone is ***actively*** overseeing all construction contracts and that contractors are complying with FLS requirements!



Questions?





10-Day Wage Decision Check

10 days before bid opening.

Issue addendum if modified.

Failure can lead to rebidding.



Bid Opening & Wage Decision Lock-In

Contract in 90 Days

Bid Opening locks in Wage Decision.

No contract in 90 days

Must check for Wage Decision modifications.

Failure can lead to a finding at the compliance review.



What is a Certified Payroll Report?

- ❖ The payroll report, and
- ❖ The Statement of Compliance (located on the backside of the payroll report).
- ❖ You can use DOL form WH-347 or its equivalent.
- ❖ It must be submitted within seven days of the end of each payroll period.



- ❖ It's the certification part of the certified payroll reports.
- ❖ Box 4 shows how fringes will be paid.
- ❖ Signed by owner/president or the person who pays or supervises the payment of workers.
- ❖ Must be an **original** signature in blue or black ink or an electronic signature.



Federal Labor Standards Brain Buster

True or False

Davis-Bacon does not apply to demolition contracts.

True or False

Davis-Bacon applies to a housing rehab contract with 6 units.

True or False

All issued wage decisions are “locked in” with the bid opening



Questions?





Virginia's New Minimum Wage

- On January 1, 2023, the Code of Virginia Section 40.1-28.10 was amended to increase the state minimum wage. All employers operating in Virginia are now required to pay each of their employee wages of **at least \$12.00 per hour**.
- Pursuant to § 40.1-28.10 (D), this rule is **effective from January 1, 2023**, until January 1, 2025. This minimum wage increase **applies to all existing CDBG and ARC contracts already underway as well as new projects**. It also applies to all job classifications listed on the wage decision issued for their respective project.



Wage Decision

"General Decision Number: VA20220025 02/25/2022

Superseded General Decision Number: VA20210025

State: Virginia

Construction Types: Heavy (Heavy and Sewer and Water Line)

Counties: Bland, Carroll, Dickenson, Floyd, Galax*, Grayson, Henry, Lee, Martinsville*, Norton*, Russell, Wise and Wythe Counties in Virginia.

*INDEPENDENT CITIES

HEAVY CONSTRUCTION PROJECTS (Including Sewer and Water Lines)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

Modification Number

0

1

Publication Date

01/07/2022

02/25/2022

* SUVA2010-026 09/01/2010

	Rates	Fringes
CARPENTER.....	\$ 9.00 **	0.84
CEMENT MASON/CONCRETE FINISHER...	\$ 11.00 **	1.02
ELECTRICIAN.....	\$ 15.55	2.37
LABORERS		
Common or General.....	\$ 7.64 **	0.51
Flagger.....	\$ 7.25 **	
Pipelayer.....	\$ 7.89 **	
POWER EQUIPMENT OPERATOR:		
Backhoe.....	\$ 10.97 **	0.72
Bulldozer.....	\$ 18.00	
Crane.....	\$ 20.63	7.28
Excavator.....	\$ 11.36 **	1.09
Loader.....	\$ 12.79 **	1.17
TRUCK DRIVER		
Dump Truck.....	\$ 10.61 **	1.03
Off the Road Truck.....	\$ 16.50	

Additional Job Classifications

- ✓ Identified at the pre-construction conference and request submitted after construction contract is signed, and
- ✓ When a new trade is unexpectedly needed and it isn't listed on the applicable wage decision.



Reviewing Proposed Classifications

- The type of work needed for a project is not already listed on the applicable wage decision,
- The proposed classification is being used on other projects in area, and
- You are not creating a new construction classification but adding an existing construction classification to the appropriate wage decision.

Window Seal Worker Example: The project requires that windows be sealed. The wage decision lists a glazier.

Q: Do you need to request an additional job classification?

A: No, sealing work is incidental to window rehab & insulations, which is covered by glazier classification.

Notify Workers



- Post DOL letter next to wage decision



Reviewing Proposed Wage Rates

- Proposed wage rate, including any benefits, has to bear a “reasonable relationship” to other similar existing wage rates, and
- Similar is defined as those from the same category of classifications and sectors of industry (See SCA Directory of Occupations on DOL website)

POWER EQUIPMENT OPERATOR:

Backhoe.....	\$ 12.85	1.22
Bulldozer.....	\$ 18.00	
Crane.....	\$ 20.63	7.28
Excavator.....	\$ 12.28	1.97
Loader.....	\$ 12.67	1.13

TRUCK DRIVER

Dump Truck.....	\$ 10.54	0.53
Off the Road Truck.....	\$ 16.50	

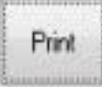
Questions?





1099 Workers

- ❖ Independent contractors so FICA, federal taxes and state taxes are not deducted from their wages
- ❖ Every person who performs the work of a laborer or mechanic is “employed” regardless of any contractual relationship and must be paid as much as the wage rate on the wage decision for trade performed
- ❖ Must be shown on payroll as having received required wage



Note:
The data inside form 1096 gets automatically generated from the data in all the 1099 forms which you fill under the "1099 From" screen.

FILER'S name

Street address (including room or suite number)

City, state, and ZIP code

Name of person to contact

Telephone number

E-mail address

Fax number

This 1096 form is intended to file form:
1099-MISC

1 Employer identification number <input type="text"/>	2 Social security number <input type="text"/>	3 Total number of forms <input type="text" value="1"/>	4 Federal income tax withheld <input type="text" value="0.00"/>	5 Total amount reported with this Form 1096 <input type="text" value="0.00"/>
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Pay Deductions

1

- Contractor must show all deductions taken from **gross** pay

2

- Do not need employee authorization for FICA, income taxes, or court-ordered garnishments

3

- Any other legally-permissible deduction must be authorized in writing by the employee

Authorization of Payroll Deductions



- ❖ Does not need to be submitted, if no deductions are being taken.
- ❖ Only needs to be resubmitted if the type of deductions changes or the amount increases

Appendix
50 AUTHORIZATION OF PAYROLL DEDUCTIONS

I, Tommy Lee Jones (Employee's Name), hereby authorize S. Spielberg Construction (Company's Name) to deduct the following amount(s) from my weekly earnings in the following categories:

Purpose	Amount	Authorization Expires
1. Health Insurance	<u>\$35.00</u>	<u>January 20, 2014</u>
2. Intensive Care Insurance	<u> </u>	<u> </u>
3. Cancer Insurance	<u> </u>	<u> </u>
4. Uniforms	<u> </u>	<u> </u>
5. Christmas Fund	<u>\$15.00</u>	<u>January 20, 2014</u>
6. Savings Account	<u> </u>	<u> </u>
7. Other (Specify) <u> </u>	<u> </u>	<u> </u>
TOTAL	<u>\$50.00</u>	

Tommy Lee Jones
Signature

Tommy Lee Jones
Type or Write Name

December 15, 2012
Date



Conduct Employee Interviews

Once a month

Each trade at least once

25% of total workers



Missed Workers

- Phone Interview
- Mail Interview
- Document the File

Site Observations

- ❖ Record what the worker is doing and what tools and equipment are being used
- ❖ Do the types and numbers of workers generally coincide with type of projects and payroll reports?





Conducting the Interview

- Dress appropriately
- Announce yourself to foreman
- Don't interrupt their lunch break
- Observe workers and begin to annotate interview form
- Introduce self to workers and explain purpose of interviews
- Advise worker that information collected is ***confidential*** and can only be shared with employer with the worker's written permission



Information Gathering

Hours worked on
this project only

Consistent
with RAE?

Want a specific
job classification
e.g.; Excavator

Be specific:
Include
information
about crew size
such as
working with 3
pipelayers

1a. Project Name Endly Street Phase 1			2a. Employee Name Alex Driver		
1b. Project Number 18-11			2b. Employee Phone Number (including area code) 434-447-1234		
1c. Contractor or Subcontractor (Employer) Sample Construction Company			2c. Employee Home Address & Zip Code 385 West Drive, Madison, VA		
3a. How long on this job? 2 years			3b. Last date on this job before today? 5/21/2022	3c. No. of hours last day on this job? 8	4a. Hourly rate of pay? 62.83
			4b. Fringe Benefits? Vacation Yes <input checked="" type="radio"/> No Medical Yes <input checked="" type="radio"/> No Pension Yes <input checked="" type="radio"/> No		4c. Pay stub? Yes <input checked="" type="radio"/> No
5. Your job classification(s) (list all) — continue in block 18 if necessary Power Equipment Operator					
6. Your duties — continue in block 18 if necessary Dig holes for pipeline					
7. Tools or equipment used — continue in block 18 if necessary Excavator					
8. Are you an apprentice or trainee? Yes <input checked="" type="radio"/> No			10. Are you paid at least time and 1/2 for all hours worked in excess of 40 in a week? Yes <input checked="" type="radio"/> No		
9. Are you paid for all hours worked? Yes <input checked="" type="radio"/> No			11. Have you ever been threatened or coerced into giving up any part of your pay? Yes <input checked="" type="radio"/> No		
12a. Employee Signature Alex Driver			12b. Date 5/27/2022		
13. Duties observed by the Interviewer (Please be specific.) Operating excavator -digging holes and filling in trench					
14. Remarks — continue in block 18 if necessary					
15a. Interviewer Name (Please Print) John Smith-Jones		15b. Signature of interviewer John Smith-Jones		15c. Date of interview 5/27/2022	

Want
permanent
address, not
a temporary
working
address



Back in the Office

Payroll Examination	
16. Remarks — continue in block 18 if necessary Time sheet shows he worked 10.5 hours. Contacted payroll clerk and verified he worked 10.5 hours.	
17a. Signature of Payroll Examiner <i>Jane Jones-Smith</i>	17b. Date 5/27/2022



Federal Labor Standards Brain Buster

True or False

The foreman can accompany you on the employee interviews.

True or False

If there is a small crew, it is okay to re-interview workers.



Technical Assistance

- The *CDBG Management Manual*
- *Davis-Bacon Labor Guide*
- Technical Assistance FLS Review with your CDS

Final Questions?





Shameless Marketing Plug

- ▯ Freestanding training session on federal labor standards later this year
- ▯ Let Elizabeth or Kirsten know of any topics you would like to see covered
- ▯ Can't wait? See the FLS webinars on DHCD website at <https://www.dhcd.virginia.gov/cdbg-training-archive> and then talk to your CDS

A large, light blue silhouette of a family walking away from the viewer. The father is on the left, carrying a baby in a carrier. A young girl is in the middle, holding hands with the father and mother. The mother is on the right, also holding the girl's hand. They are walking on a path that leads towards a horizon line.

THANK YOU

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